

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

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| Implementation of Renewables |) | |
| Portfolio Standard Legislation (public |) | Docket No. 03-RPS-1078 |
| Utilities Code Sections 381, 383.5, |) | RPS Proceeding |
| 399.11 through 399.15, and 445; |) | |
| [SB 1038]; [SB 1078]) |) | |
| _____ |) | |
| In the Matter of: |) | |
| Implementation of Renewables |) | Docket No. 02-REN-1038 |
| Investment Plan Legislation |) | Re: Renewable Resources |
| [Public Utilities Code Sections 381, |) | Development Report |
| 383.5 and 445 (SB 1038)] |) | |
| _____ |) | |

**COMMENTS OF POWEREX
ON
*RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK***

I. INTRODUCTION

The California Energy Commission Renewables Committee (“Committee”) has requested input from interested parties relating to the Energy Commission’s RPS Proceeding and Renewable Energy Program (“REP”) and the following draft guidebooks developed in conjunction with the RPS Proceeding and REP: (1) *Renewables Portfolio Standard Eligibility Guidebook*; (ii) *New Renewable Facilities Program Guidebook*; and (iii) *Overall Program Guidebook for the Renewable Energy Program*. Powerex Corp. (“Powerex”) is quite supportive of the RPS effort and is pleased to respond to the Committee’s invitation in its “Notice of Renewables Committee Hearing” to comment on certain of the specific topics identified in Attachment A to the notice.

Powerex is the marketing subsidiary of British Columbia Hydro and Power Authority (“BC Hydro”). Powerex sells power at wholesale in the United States pursuant to market-based rate authority granted by the Federal Energy Regulatory Commission. Powerex is currently marketing Green Power Certificates (“GPCs”) / Renewable Energy Certificates (“RECs”) from competitively-priced qualifying renewable (small hydro, biomass, and landfill gas) generation facilities. The nature of Powerex’s particular interest in the subject proceeding is as a marketer of GPCs/RECs from qualifying out-of-state renewable generation facilities.

As a marketer of GPCs/RECs from small, hydroelectric facilities that are located outside of California, Powerex is most interested in those portions of the *RPS Eligibility Guidebook* that reference the eligibility of out-of-state renewable power for both the RPS and SEPs and, in particular, those provisions that address the eligibility of small hydro facilities for both programs.

It is in this capacity that Powerex focuses its attention on the following topics identified by the Committee as subjects of interest in Attachment A to the “Notice of Renewables Committee Hearing”: (1) Hydro: topic 6; (2) SB 67 and AB 183: topics 8, 9, and 10; (3) Certification Updates: topic 13; and (4) Interim Generation Tracking System: topic 14. In addition to giving consideration to its specific comments on the above-referenced topics, Powerex also asks the Committee to implement guidelines for the RPS that are careful to recognize that out-of-state suppliers should not be denied eligibility for the RPS and SEPs merely because they are required to operate under different jurisdictional conditions and reporting systems than those applicable to in-state facilities subject to California’s comprehensive legal and regulatory scheme.

II. COMMENTS

Hydro:

The Committee recommends that RPS eligible facilities must not exceed 30 MW in total even if an applicant claims that only a portion of the facility is repowered or new. Thus, any addition to a facility that is 30 MW or larger would not be eligible, nor would a repower project that adds 5 MW to a 26 MW facility qualify for RPS eligibility.

Powerex supports the Committee's recommendation that RPS eligible hydro facilities must not exceed 30 MW in total. This recommendation is consistent with the U.S. Green-e standard.

SB 67 and SB 183:

(i) Topics 8 and 9:

The RPS Eligibility Guidebook reflects that SB 183 and Senate Bill 67 (SB 67, Chapter 731, Statutes of 2003, Bowen), became law on October 2, 2003 and October 8, 2003, respectively. SB 183 and SB 67 establish new RPS eligibility requirements for out-of-state renewable power. In addition, SB 183 recasts the provisions of Public Utilities Code sections 383.5 and 445 into Public Resources Code sections 25740 through 25751. The Committee invites comments on how the statutory changes imposed by SB 183 and SB 67 should be reflected in the guidelines.

In particular, the Committee invites comment on whether RPS eligible procurement must be delivered in-state. SB 67 may be construed as not imposing an in-state deliverability requirement for generation to qualify as eligible for the RPS. To be consistent with the Phase 1 Decision and the current policy that energy may not be unbundled with its associated RECs to qualify for the RPS, however, the Committee proposes that facilities which qualify for

RPS certification pursuant to SB 67 should be required to deliver energy in-state. Consequently, any generation procured for the RPS from an RPS eligible facility located out of state must be delivered to an in-state electricity delivery hub.

Powerex has stated in its prior comments in this proceeding that allowing unbundled RECs will result in increased development of renewable resources throughout the WECC without being constrained by transmission limits in certain geographic regions. Powerex agrees that "SB 67 may be construed as not imposing an in-state deliverability requirement for generation to qualify as eligible for the RPS." In order to resolve the inconsistency between the current policy disallowing unbundled RECs and SB 67, Powerex proposes that the in-state delivery requirement be relaxed to be less prescriptive and allow RECs to be unbundled and rebundled so that there is no requirement for unit specific transmission, delivery, and scheduling into California. However, the out-of-state supplier would sell the unbundled RECs from the out-of-state eligible resource and schedule commodity energy to the location of the California retail seller's choice resulting in a rebundling of the RECs with energy.

(ii) Topic 10:

The Committee also invites comment on whether the Energy Commission should develop a listing of contract types with out-of-state generators that are allowable and those that are not. For example, should the only allowable contract type for an out of-state generator be a unit-contingent contract that provides for complete, unit-specific transmission, delivery, and scheduling into California with no REC unbundling?

Powerex would suggest that the Commission not be overly prescriptive by developing a list of allowed contract types that would impede and add to the cost of renewable resource development. There should be a clear separation between what policies the

Commission develops in implementing the RPS legislation and the commercial arrangements between buyers and sellers. If those policies suggest no reasonable basis for differentiating in-state supplies from out-of-state supplies, particularly in the context of the overall policy goals of the RPS Proceeding, great care should be taken to avoid the imposition of contract requirements or distinctions that improperly discriminate against otherwise eligible out-of-state supplies and artificially constrains the availability of supplies that otherwise would meet and advance the policies that gave rise to SB 67 and SB 183.

Out-of-state suppliers should have a clear understanding of the resource-specific requirements for eligibility under California RPS while specific contractual matters should be left to resolution as part of the bilateral contracting process between suppliers and California retail sellers subject to the RPS requirement.

Certification Updates:

In the Phase 2 Decision, the Energy Commission decided, “Certification must be renewed every year to capture any facility changes and to confirm that all certified renewable energy resources remain eligible for the RPS.” The Committee proposes conducting such updates every two years and invites comments on this modification to the Decision.

Powerex supports this modification to require RPS certification to be renewed every two years.

Interim Generation Tracking System:

The Committee proposes verifying the data submitted through the interim generation tracking system with data from the Energy Information Administration, the Energy Commission’s Renewable Energy Program, and the Energy Commission’s Electricity Analysis Office. These databases each use different facility identification numbering systems, and in many

case report different totals for generation. The Committee invites comments on how to verify the data submitted in the interim until an electronic tracking system is operational.

Powerex would like the Commission to be aware that its interim verification procedure would not be workable for out-of-state suppliers from the western Canadian provinces in the WECC (British Columbia and Alberta) or Mexico that do not submit data to the U.S. Energy Information Administration.

Powerex is an active participant in the development of a Western Renewable Energy Generation Information System (WREGIS) and believes a WREGIS that will meet the needs of California and other states and provinces in the WECC to be the permanent solution to the verification issue.

Eligibility of Out-of-State Facilities/Supplemental Instructions for Small Hydropower Facilities:

At p. 14 of the *RPS Eligibility Guidebook*, there is a statement of requirements that out-of-state facilities must meet to be eligible for the RPS and SEPs, including 2(d) which reads as follows: “The facility...[i]f it is located outside the United States is developed and operated in a manner that is protective of the environment as a similar facility located in California.” Powerex is entirely supportive of the obvious policy considerations that give rise to the referenced requirement and only asks for reasonable flexibility in applying the referenced test to out-of-state facilities. Specifically, recognition must be given to the fact that out-of-state suppliers operate under legal and regulatory schemes that are not necessarily the same as those in effect in California (e.g. while Oregon, Washington, or Canada each have comprehensive schemes for protecting the environment, none are identical to the California Environmental Quality Act). In determining whether out-of-state facilities meet the category 2(d) requirement for program eligibility, it would be inappropriate to allow disqualification of an out-of-state

facility which, while in compliance with all applicable rules and regulations, might theoretically be required to operate differently if it were located in California and subject to the state's legal and regulatory scheme.

In a similar vein, Powerex is concerned that draft language addressing "Supplemental Instructions for Small Hydropower Facilities" may be unduly restrictive and an unnecessary and inadvertent bar to participation by out-of-state suppliers in the RPS and SEPs. Specifically, at p. 18 of the draft *Guidebook*, a statement is set forth of water-use data and documentation that must be provided in order for a facility to self-certify that has been built or repowered on or after September 12, 2002 and is therefore eligible for the RPS and SEPs.

Among other information, the self-certification form requires identification of the owner of the facility. Powerex, of course, has no problem with this requirement as far as it goes. It appears, however, to fail to recognize that others, besides the owner of the small hydropower facility, i.e holders of RECs, might well be an applicant for the RPS and SEPs. The self-certification form should be modified to recognize that applicants for participation in the RPS and SEPs might well be holders of the rights to supply from an otherwise eligible small hydropower facility and might not necessarily be the owner of the facility.

As for the specific documentation of "water rights" that is required, e.g. the last five statements of Water Diversion and Use filed with the State Water Resources Control Board, the Committee should recognize that out-of-state suppliers cannot comply with any such requirement since they do not file the referenced reports. Provision should be made with respect to the nature and scope of information required for self-certification to take into account that out-of-state suppliers do not report water use and appropriation rights in the same manner as is required in California. Out-of-state suppliers should be allowed to meet the self-certification

information requirements by providing analogous permits and reports that are required by the jurisdiction in which the subject facility actually operates.

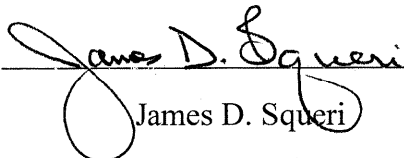
III. CONCLUSION

Powerex thanks the Committee for the opportunity to comment on the guidebooks relating to the RPS Proceeding and REP and respectfully asks the Committee to give its consideration to the comments submitted by Powerex herein.

Dated this 9th day of February, 2004 at San Francisco, California.

Respectfully submitted,

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